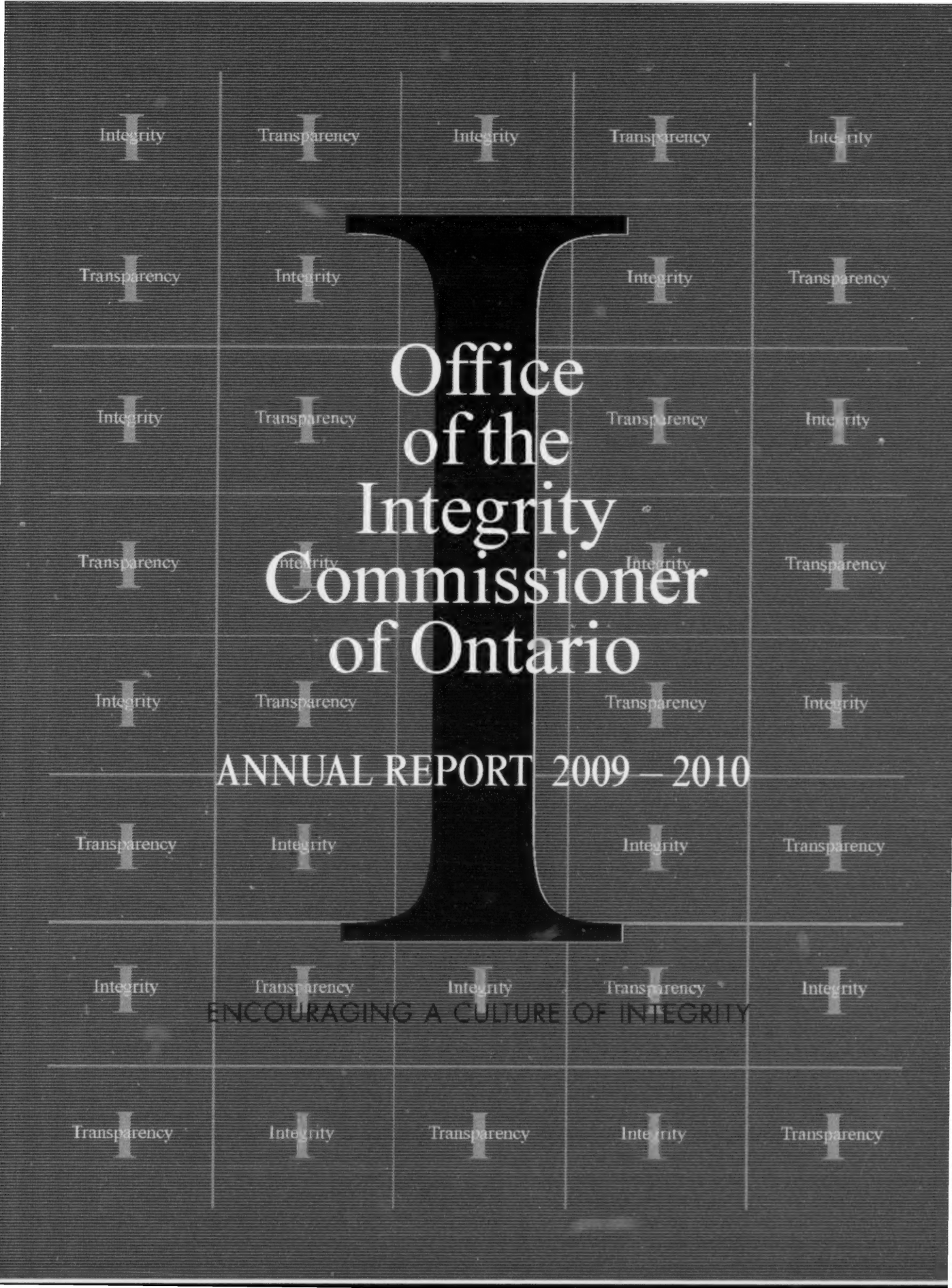
Integrity
Transparency
Office of the Integrity Commissioner of Ontario
ANNUAL REPORT 2009 – 2010
ENCOURAGING A CULTURE OF INTEGRITY

Legislative Assembly of Ontario

Assemblée législative de l'Ontario

Office of the Integrity Commissioner
Lynn Morrison, Commissioner

Bureau du commissaire à l'intégrité
Lynn Morrison, Commissaire

June 2010

The Honourable Steve Peters
SPEAKER OF THE LEGISLATIVE ASSEMBLY OF ONTARIO

Dear Mr. Speaker:

It is an honour to present the Annual Report of the Office of the Integrity Commissioner for the period April 1, 2009, to March 31, 2010.

Yours very truly,

Lynn Morrison

Lynn Morrison
INTEGRITY COMMISSIONER

Ethics and integrity are at the heart of public confidence in government. The Office of the Integrity Commissioner is impartial, believing that good leadership fosters an ethical culture. It works to reconcile private interests and public duties, promoting confidence and respect for Ontario's Legislative Assembly and the Ontario Public Service.

Encouraging a Culture of Integrity

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LYNN MORRISON
INTEGRITY COMMISSIONER

News in the past year regarding inappropriate spending practices in the public sector has taken its toll on public trust in government. This is something that concerns me, the public and those in the public service. The Office of the Integrity Commissioner of Ontario has a role to play in promoting and encouraging ethical and accountable conduct on the part of elected officials, Ministers' staff, public officials who are lobbied and public servants involved with disclosures of wrongdoing. This Annual Report provides an opportunity for me to tell you more about our role. The year has been one of the most challenging and exciting years this Office has experienced, marked by a new accountability-related mandate and a number of significant accomplishments.

A New Mandate

For the last eight years, we have been reviewing the expenses of cabinet ministers, opposition leaders and their staff. The proclamation of the *Public Sector Expenses Review Act, 2009* in December builds on this work by giving this Office the authority to review the expense claims of senior officials and staff in 22 of the province's largest agencies. I welcome the opportunity to be part of this process to ensure the rules are followed and taxpayers' interests are protected.

I am happy to report that we have begun this work in earnest. We are at various stages of review for expenses claimed by affected public servants prior to Dec. 31, 2009, which is well in advance of the statutory deadline for agencies to file expense claims with this Office. The cooperation we have received from the agencies is appreciated and will be a key factor in the success of this new mandate. ▶

Disclosure of Wrongdoing

▶ Well on our way toward establishing best practices.

We now have the benefit of two-and-a-half years' experience under the disclosure of wrongdoing framework in the *Public Service of Ontario Act, 2006*. The framework is of critical importance, functioning as an early warning system for major problems within the public service. We are charting new territory with this mandate, and with the benefit of experience are well on our way toward establishing best practices.

We continue to benefit from the experience gained by our Canadian counterparts. This past October I was pleased to host representatives of other Canadian jurisdictions doing work in the field of disclosure of wrongdoing. To assist us with gauging our effectiveness in fulfilling our mandate, we have also begun a small-scale consultation process to assist in understanding the perspectives of our key stakeholders and to learn more about what we can do better.

Lobbyists Registration

The Office has maintained the Ontario Lobbyists Registry since 1998, and no changes to the legislation have occurred since that time. The climate of lobbying has changed, however, and in response we are reviewing our practices to see where we can strengthen them to better encourage transparency. One initiative accomplished this year was my decision to discontinue the practice of accepting registrations indicating that a person was lobbying "Government Wide." We learned that lobbyists rarely lobby every possible public office holder, and were using this phrase as shorthand. The problem was that the use of "Government Wide" does not assist the public in understanding the nature of lobbyists' activities. Starting on April 1, 2010, lobbyists are required to be more specific about the focus of their lobbying activities.

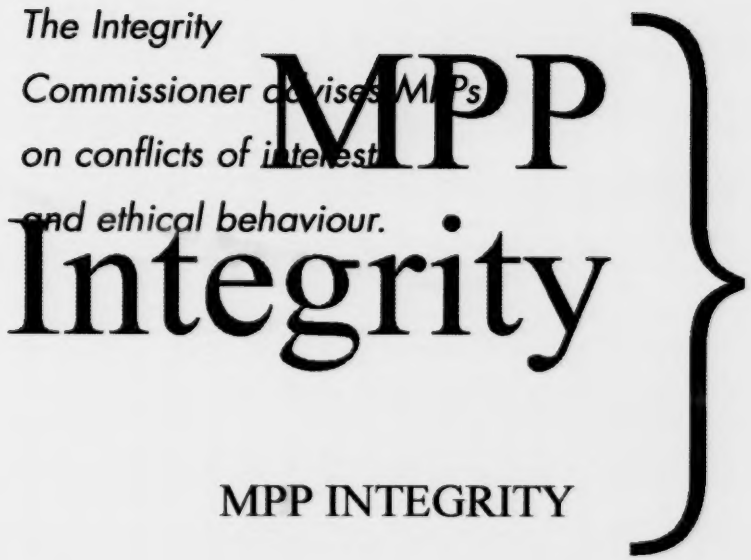
Education and Outreach

I have found that when I have an opportunity to tell people about the role of this Office, I am often met with surprise that the Office exists. For example, it always seems to come as a shock that there are regulations and rules in place to govern the conduct of elected officials and that they are required to complete a financial disclosure and meet with me on an annual basis. The annual disclosure meetings I have with MPPs — and the fact that all members comply — should, and often does, provide the public with comfort that there are safeguards in place to help MPPs put the public interest first.

Increasing awareness of the Integrity Commissioner's work can contribute to confidence in government. This year, we have taken concrete steps to assist with raising the profile of our work. We have published a brochure that provides general information about the work that we do, and I have held many information meetings with community groups and direct stakeholders. Outreach accomplishments this year confirm my belief that success requires a continued focus on raising awareness and providing regular education. We will continue these initiatives in the year ahead.

Encouraging public confidence in government. ▶

Finally, I want to thank my team. We are a small group, but we are effective. We are guided by common sense, discretion and a belief that we have an important role to play in encouraging public confidence in government.


The Integrity
Commissioner advises MPPs
on conflicts of interest
and ethical behaviour.
MPP
Integrity
MPP INTEGRITY

Mandate

▶ High ethical standards strengthen trust and confidence in the Ontario government.

The Integrity Commissioner has three key responsibilities under the *Members' Integrity Act, 1994*:

- receive inquiries and offer confidential advice on ethical issues raised by MPPs;
- oversee the annual private disclosure statements, meeting with each MPP to discuss the information, and filing a public version of this material with the Speaker of the Legislative Assembly; and
- conduct inquiries into alleged violations of the Act, when raised by one MPP about another.

The Integrity Commissioner is an officer of the Legislative Assembly, and is independent of government.

Inquiries

In the past year, 343 confidential inquiries were received from MPPs, their staff and members of their families under section 28 of the *Members' Integrity Act, 1994*. The Integrity Commissioner works to respond to all of these inquiries within a 24-hour period; however, further information is often required, so the response may take longer. Many issues that come before the Integrity Commissioner are becoming more complex, requiring additional research into the specific issue.

The Act prohibits an MPP from making a decision or participating in making a decision if that MPP has an "opportunity to further [his or her] private interest or improperly to further another person's private interest." The test is not whether the MPP will or will not, in fact, further his or her private interest. The test is whether there is the opportunity. In the absence of an exception, the public expects and is entitled to know that MPPs are participating in decisions free from the influences of their own private interests.

All MPPs should consider the principles in the Preamble to the Act in determining whether the proposed activities conform with these principles. Common sense and good judgment are required to answer the question of whether the proposed activities interfere with the MPP's primary responsibility to represent constituents' interests in the Legislative Assembly and to the Ontario government. ▶

Each year, the Office has published anonymized inquiries to help MPPs identify which circumstances could raise issues under the Act. Two issues – gifts and participation in charitable events – have given rise to the most frequent questions and, therefore, are highlighted in this Annual Report.

The following are some examples of inquiries received in the past year. They are intended to raise the awareness of MPPs and their staff, with the expectation that this Office will be contacted for advice and guidance when such issues arise. When reviewing the inquiries, it is important to remember that each is based on its own disclosed facts and the opinion issued is based on those facts.

GIFTS

MPPs should avoid circumstances where a reasonable person might conclude that the gift or benefit given was intended to influence the MPP in carrying out his or her duties. This concern is obviously heightened when gifts are received from stakeholders of the Ontario government.

The rules provide that MPPs are permitted to accept only those gifts or benefits connected with the performance of their duties if it is "a gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office." Gifts arise due to a protocol, custom or social obligation if an MPP had, for example, participated in a ribbon-cutting ceremony, or made a speech.

Consideration should be given to the following questions when offered a gift or benefit:

- How is this gift connected to my responsibilities of office?
- Can the gift or benefit reasonably be seen to be given to influence me in the exercise of my official responsibilities of office (either as MPP or Minister)?
- Is there an expectation that I will do something for the donor in return?

In the absence of a protocol, custom or social obligation, the gift is not permissible under section 6 of the Act. If the gift has already been accepted by the MPP, the Integrity Commissioner usually recommends that the gift be returned or reimbursement made to the donor. Gifts received with a value over $200 must be publicly disclosed. ▶

Tickets to a cultural event ▶

A government stakeholder offered two complimentary tickets to a Minister to attend a cultural event that did not fall under the Minister's responsibilities of office.

Commissioner's Response

Ministers are often required to attend events as official representatives of the Ontario government and are provided with tickets or access to events to fulfill these duties. In this case, because the event did not fall within the Minister's official responsibilities, accepting the tickets was not considered an incident of protocol, custom or social obligation that normally accompanies the responsibilities of office and was deemed inappropriate.

Compensation for a cancelled event ▶

An MPP was asked to speak at an event. The event was cancelled, but the MPP was not notified. A gift certificate was sent to the MPP as an apology.

Commissioner's Response

Regardless of the circumstances under which a gift is provided, gift certificates are considered the equivalent of cash, so their acceptance is inappropriate. In this case, even if the event had proceeded and the MPP spoken, the gift certificate should be returned to the donor.

PARTICIPATING IN CHARITABLE EVENTS

MPPs are entitled to participate in charitable initiatives within their constituencies under the following conditions:

1. the event is for a charitable organization or a benevolent cause;
2. involvement is in a reasonable manner and without undue influence;
3. the MPP or Minister does not seek to further any private interest that could conflict with his or her duties as a member of the assembly or the Executive Council;
4. the MPP or Minister is not in a position to confer or deny a benefit to any donors;
5. there is no expectation on the part of the organization of anything in return.

Ministers are often asked to serve as an honourary chair or patron of a fundraising event for a non-profit organization in the community. This is considered an acceptable activity as the designation generally implies support for the organization in question, but no active operational responsibility. However, Ministers should ensure that they remove themselves from any discussions regarding government funding or matters that may give rise to a conflict as a result of their status as a member of the Executive Council. ▶

Lunch with the Minister ▶

A Minister was asked to provide a "Lunch with the Minister and a tour of Queen's Park" as part of a silent auction for a charitable organization.

Commissioner's Response

A Minister providing a lunch and tour of Queen's Park is not a conflict of interest; however, it sets up the potential for a conflict of interest if the recipient is a ministry stakeholder. If steps are taken to restrict bidders who are ministry stakeholders, providing a lunch and tour for the silent auction does not violate the Act.

Helping organize a fundraiser ▶

A constituency office was asked to assist with the organization of a fundraiser in the community.

Commissioner's Response

It is inappropriate to use constituency office resources, including staff time and equipment, in the promotion of a fundraising activity. However, staff members are entitled to assist with the fundraiser on their own time, and the MPP and staff are not restricted from attending the event.

MISCELLANEOUS INQUIRIES

Observing a community meeting ▶

A community meeting regarding a controversial issue that did not fall within a Minister's ministerial responsibilities was to be held in the Minister's riding. The Minister was unable to attend, and asked whether it would be appropriate for a ministerial staff person to attend as an observer.

Commissioner's Response

Ministers have constituency staff and ministerial staff. It is important that the roles and duties of each type of staff are clearly separated. In this case, the meeting involved a constituency issue unrelated to the Minister's responsibilities. For this reason, it was the Commissioner's opinion that it would be inappropriate for ministerial staff to attend the meeting on the Minister's behalf.

It would be appropriate, however, for a member of the Minister's constituency staff to attend the meeting.

Aiding a constituent ▶

Constituents missed the deadline for submitting a written objection to a liquor licence application before the Alcohol and Gaming Commission of Ontario (AGCO). An MPP had made inquiries of the AGCO to help the constituent understand the policies and procedures relating to the licensing process. The constituents asked the MPP to intervene to cause the AGCO to receive the objection.

Commissioner's Response

The AGCO has an administrative process for liquor licence applications that must be followed. The MPP can gather information with respect to status, policies and procedures regarding objections, rights of appeal and so on. However, it would be inappropriate and contrary to the Act for the MPP to intervene with respect to an individual application before the AGCO.

Helping a constituent with a legal matter ▶

A constituent, represented by legal counsel, asked an MPP for assistance in dealing with a family law matter that was before the courts.

Commissioner's Response

If a constituent is represented by legal counsel, it is counsel's responsibility to take the steps necessary to represent the constituent. Any involvement by the MPP may be interpreted as an attempt to interfere with and/or influence the legal process, contrary to the Act.

Although the Legislature and the judiciary are both branches of the provincial government, they are separate and independent, and in accordance with parliamentary convention, any encroachment in either direction is strictly forbidden. Our democratic system of government is composed of three branches: legislative, executive and judicial. Each is supreme within its own jurisdiction. A court case is a judicial proceeding with specific provisions for appeals.

It was, therefore, the Commissioner's opinion that it was inappropriate for the MPP to become involved.

Supporting an Order of Ontario application ▶

A Minister was asked to provide a letter of support for someone known personally to the Minister regarding an application for the Order of Ontario.

Commissioner's Response

The Order of Ontario appointments are determined by the Executive Council of the Province of Ontario. The Minister is a member of the Executive Council and is entitled to speak to the matter when it arises in Cabinet. However, should the Minister choose to write a letter of support, the letter should be addressed to the Minister responsible and the Minister should not participate in any discussions or voting at Cabinet with respect to this individual.

Supporting a visa application ▶

An MPP was asked to write letters of support for constituents whose relatives and friends were seeking visa applications. The MPP did not know the relatives or friends.

Commissioner's Response

Writing letters of support with respect to visa applications is not a violation of the Act. However, the Commissioner cautioned against writing letters of support for individuals unknown to the MPP. The Preamble to the Act requires MPPs to act with integrity, which includes making representations in support of others in an informed manner.

Writing an introduction to a book ▶

A Minister was asked to write a short address to be included in a book, the topic of which falls under the Minister's jurisdiction.

Commissioner's Response

As the theme of the book falls under the Minister's jurisdiction, the Commissioner found that writing a message was appropriate. However, the Minister was cautioned that if there were other books available on similar topics, the Minister's endorsement may be interpreted as inappropriately favouring one publication over another.

Commenting on a court verdict

An MPP received numerous requests from a constituent to officially comment on the verdicts of various cases before the courts.

Commissioner's Response

The *sub judice* rule is part of the law relating to contempt of court. It deals with what public statements can be made regarding legal proceedings before the courts, whether criminal or civil, and should not be influenced by public statements. This rule applies to the parties in a case, their lawyers, the public, public officials and statements made in the legislature. Compliance with the *sub judice* rule has been accepted as part of parliamentary convention. As stated by former Integrity Commissioner The Honourable Coulter Osborne in his report about Robert Runciman, MPP, Member for Leeds-Grenville, dated Oct. 25, 2006:

> *I caution all members to be vigilant about raising issues concerning matters that are before a court, however well intended a member's comments may be. Once the court process (including any right of appeal) is complete, there is no bar to reasonable discussion about issues that were before a court. Before the process is complete, public discussion of matters then before a court is off-limits from the standpoint of members of the Legislative Assembly.*

No information was available as to whether or not all appeal mechanisms in the above referred-to cases had been exhausted, and on that basis, it was recommended that the MPP exercise caution and not comment.

Meeting with striking union members

Members of a union, in the midst of the collective bargaining process, were on strike and insisted on meeting with an MPP to discuss the demands of their employer and the government.

Commissioner's Response

There is nothing in the Act that precludes the MPP from meeting with the union members, and the MPP was aware that it would not be appropriate to attempt to interfere with the collective bargaining process. However, should a meeting take place, the MPP was advised to exercise caution not to promise or be seen to promise to exert any influence over the negotiations between the union and the employer.

The Integrity Commissioner provides Ministers' staff with advice on conflicts of interest, political activity and post-service employment issues.

Ministers' Staff – Ethical Conduct

MINISTERS' STAFF – ETHICAL CONDUCT

Mandate

The Integrity Commissioner has been the Ethics Executive for Ministers' staff since 2007. In this capacity, she provides advice on conflicts of interest, political activity and employment restrictions when Ministers' staff leave government.

Ministers' staff are required to notify the Integrity Commissioner of their conflict of interest issues and to follow the Commissioner's directions.

The ethical framework can be found in the following legislation:

- *Conflict of Interest Rules for Public Servants (Ministers' Offices) and Former Public Servants (Ministers' Offices), Ontario Regulation 382/07*
- *Public Service of Ontario Act, 2006, sections 66–69, 94–98*

Overview

Post-service employment issues continue to grow more complex. ▶

The Integrity Commissioner undertook a major outreach initiative this year, visiting ministerial offices to meet personally with staff and update them on the rules of conflict of interest, gifts and other issues. The impact was felt immediately, with an increased number of calls from individuals requesting private meetings. The Office also took advantage of the opportunity to gain helpful feedback about the program, and the views of these important stakeholders will help staff tailor future meetings to best meet the needs of Ministers' staff.

The majority of inquiries from public servants this year have been about employment opportunities once they leave government. This issue continues to grow more complex, as people consider jobs in fields that use many of the skills they used in public service.

In all, the Office received 101 inquiries this year, compared with 109 in fiscal year 2008-2009. The percentage breakdown by inquiry type is as follows: conflict of interest 42%, and post-service employment 58%.

Inquiries

All references made to "public servant" inquiries refer to public servants in Ministers' offices. ▶

These inquiries represent a selection of anonymized versions received during the past year. These examples are abbreviated and are not exhaustive. They are intended to provide a sense of the types of inquiries received by the Integrity Commissioner.

The summaries are intended to help Ministers' staff determine when they should contact the Office of the Integrity Commissioner. The Commissioner's directions and advice in these summaries are provided on the basis of specific facts, and it is expected that Ministers' staff will contact the Commissioner for specific guidance when similar issues arise.

GIFTS

Public servants are not permitted to accept gifts or benefits from any person, group or entity that has dealings or prospective dealings with the Crown if a reasonable person could conclude that the gift or benefit could influence the public servant. However, this rule does not preclude public servants from accepting a gift or benefit of nominal value given as an expression of courtesy or hospitality.

When trying to determine whether it is appropriate to accept a gift or benefit, public servants should consider why the donor provided them with a gift and if there is an expectation of something in return. Public servants must report the receipt of all gifts and benefits to the Integrity Commissioner, regardless of the value.

Concert tickets

A public servant was offered concert tickets from a government stakeholder. Is it okay to accept the tickets?

▶ *Commissioner's Response*

The public servant was directed not to accept the tickets for the following reasons:

1. the government stakeholder could have dealings with the Crown;
2. a reasonable person may conclude that accepting the tickets could influence the public servant in the course of their work with the Crown;
3. the tickets are not considered nominal in value; and
4. attending the concert does not fall within the public servant's duties and responsibilities.

OUTSIDE ACTIVITIES

In many circumstances, public servants are permitted to volunteer, sit on boards and work on a part-time basis outside of the public service providing these activities do not conflict with their duties to the Crown, or impair or influence their ability to do their ministerial jobs. Compliance with these rules may prove difficult when an outside activity relates to a matter that falls under the jurisdiction of the public servant's ministry or the activity involves an entity that is a government stakeholder. Further, outside activities must be kept separate from work with the Crown and conducted on a public servant's own time. Conflict of interest rules involving preferential treatment and participating in decision making must also be considered.

Freelance work

A public servant was considering freelance work writing articles on topics unrelated to his or her ministry.

Commissioner's Response

As this activity does not relate to the public servant's ministry, it was determined that the articles could be written under the following conditions:

1. the public servant informs the Minister, and the Minister agrees;
2. the public servant conducts the work without using government resources, including time; and
3. the public servant contacts the Commissioner for further advice if a topic could potentially infringe on a provincial government issue.

Sitting on a board of directors

A public servant was considering sitting on a board of an organization that is not a stakeholder of the public servant's ministry.

Commissioner's Response

It was determined that the public servant could sit on the board under the following conditions:

1. the public servant informs the Minister, and the Minister agrees;
2. the public servant excuses himself or herself from any board discussions regarding provincial government funding or any other issue that could conflict with the Crown; and
3. the public servant does not use any government resources, including time, for board activities.

Blogs

A public servant had been writing a personal blog. A job change to a new ministry meant that the issues on the blog then fell under the new ministry's jurisdiction. Could the public servant continue with the blog?

Commissioner's Response

The public servant was directed to discontinue the blog and remove past entries from the Internet host while employed at this ministry.

POST-SERVICE EMPLOYMENT

Public servants who leave the government's employ are required to comply with post-service obligations and restrictions, which include the following:

- an ongoing duty not to seek preferential treatment or disclose confidential information;
- a 12-month restriction on lobbying any ministry that the public servant has been employed with in the last 12 months;
- a potential restriction against accepting employment with an entity, person or public body in which a public servant had substantial involvement and had access to confidential information that could harm the Crown or give the entity an advantage; and
- an ongoing restriction against advising any entity about a specific proceeding, negotiation or transaction about which the public servant advised the Crown.

It is recommended that public servants contact the Commissioner for post-service advice and direction whenever they are considering a move.

Becoming a lobbyist ▶

A former public servant asked whether there is a prohibition against lobbying an agency that falls under the jurisdiction of the individual's former ministry.

Commissioner's Response

Former public servants are restricted from lobbying their former Minister, the Minister's staff and any public servants in the ministry for a period of 12 months. However, they are not restricted from lobbying agencies that fall under their former ministry's jurisdiction. As public servants have an obligation not to seek preferential treatment or privileged access, the public servant was directed to exercise caution when lobbying the agency. It was recommended that the public servant contact the Commissioner for advice before any undertaking involving the agency to ensure he or she is in compliance with the obligation not to seek preferential treatment.

Keeping lobbying activities onside

A former public servant asked whether it would be a breach of the lobbying restrictions to attend meetings with public officials from the individual's former ministry. The meetings would be for an exchange of information.

Commissioner's Response

The definition of "lobbying" is communicating with a public office holder in an attempt to influence. Meetings with public officials may or may not be considered lobbying, so each meeting would have to be assessed on a case-by-case basis. The public servant should consider that he or she may not be able to control the content or direction of a meeting, even though there is no intention for lobbying to occur. In addition, care must be taken to ensure the public servant is not seeking preferential treatment during meetings with public officials.

It was recommended that the public servant seek advice from the Office of the Integrity Commissioner before each meeting with former ministry officials for 12 months to ensure he or she would be in compliance with the lobbying restriction and preferential treatment obligation.

The Integrity Commissioner reviews the expenses for travel, meals, hospitality and accommodation filed by a broad group of public servants. The goal is to encourage prudence and accountability when spending public funds.

Expenses Review

EXPENSES REVIEW

Mandates

Cabinet Ministers and Opposition Leaders

The Integrity Commissioner reviews the travel, meal, hospitality and accommodation expenses of cabinet ministers, parliamentary assistants, opposition leaders and their staff. The Commissioner determines whether the expenses meet with criteria set out in the rules established pursuant to the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002.*

The claims are reviewed, and questions are directed to the claimant. The government is reimbursed for any claims that are found to be in breach of the criteria.

Public Sector Expenses

The Integrity Commissioner reviews the travel, meal, hospitality and accommodation expenses incurred by senior staff and appointees at the largest public agencies, boards and commissions in Ontario. The review follows a framework similar to that for government Ministers and opposition leaders. The Commissioner determines whether the expenses meet criteria set out in the Travel, Meal and Hospitality Expenses Directive, and any disallowed claims must be repaid. This responsibility is outlined in the *Public Sector Expenses Review Act, 2009.*

Overview

▶

Expense guidelines for public servants are found in the Government of Ontario Travel, Meals and Hospitality Expenses Directive.

This year, the expense review mandate of the Office of the Integrity Commissioner was substantially expanded with the passage of the *Public Sector Expenses Review Act, 2009*. Building on experience reviewing expenses of cabinet ministers, opposition leaders and their staff, the Office developed more extensive policies and procedures to facilitate the review. With the cooperation of the 22 affected agencies, staff began the review of expenses well in advance of the deadline specified in the Act.

In addition to preparing for the new mandate, the Office has concluded a very busy and successful year overseeing expenses filed by Ontario's cabinet ministers, opposition leaders, parliamentary assistants and members of their staff. All of the submitted expenses are reviewed to ensure that they are held to the highest of standards. The review is guided by one key principle: making sure that all claims represent a prudent use of public funds. It is balanced with the principle that Ministers are often performing ceremonial or official duties on behalf of the province.

The reviews under each mandate are thorough. Claims are reviewed to ensure compliance with the applicable rules or directive and to ensure sufficient documentation is present, and where possible, claims are compared with market prices. When necessary, the Office requests additional information. However, when a claim is determined to be excessive, the Integrity Commissioner requests reimbursement.

Cabinet Ministers and Opposition Leaders

The Integrity Commissioner is required to provide the Speaker of the Legislative Assembly of Ontario with a written report on the review of the expenses incurred by Ministers, parliamentary assistants, leaders of the opposition and their staff. This is set out in section 10 of the *Cabinet Ministers' and Opposition Leaders' Expenses Review and Accountability Act, 2002*.

The Integrity Commissioner can name in the report any person who does not comply with an order to repay or a recommendation for other action. The Commissioner cannot name a third party, and cannot fault anyone for relying on her advice. The Commissioner may report on cases where advice regarding remedial action is not taken.

Public Sector Expenses Review

The *Public Sector Expenses Review Act, 2009* gives the Commissioner the responsibility for reviewing the expenses of senior officials at 22 of Ontario's largest agencies, boards and commissions, covering an estimated 550 people.

The Integrity Commissioner reviews the expenses of a certain number of agency employees and appointees (defined as "designated persons" in the Act). Designated persons are as follows:

- all members of an agency's board of directors;
- the CEO and senior management team; and
- the annual top five expense claimants employed by the agency.

Since receiving this mandate, the Office has successfully established a review system that maximizes existing staff resources and the expertise and advice of the Internal Audit Division in the Ministry of Finance. ▶

A new review system will cover about 550 people. ▶

As soon as possible after developing the system, Office staff met directly with representatives of each of the 22 agencies to explain the review process. These meetings also helped staff learn more about the respective agencies' expenses and accounting processes and provided useful feedback.

The Act requires that the Commissioner review all expenses claimed by designated persons after Sept. 1, 2009; however, the statutory deadline for filing expenses with the Office is June 30, 2010. With the process in place, the Office was able to receive expense claims well in advance of the deadline, and is happy to report that starting in January 2010, staff began the work of reviewing expense claims for the period Sept. 1 to Sept. 30, 2009. This early review was possible due to the cooperation of all agencies. In the coming months, the Office will work to fall in line with the quarterly filing requirements established in the Act.

Beginning the review with a smaller batch has allowed the Office to evaluate the process, make necessary adjustments and assess resource needs. As a result, two new staff members will be added in the coming fiscal year. They will be dedicated to both expense review mandates and will coordinate all expense review activities.

Disclosure of Wrongdoing

Ensuring a meaningful response when public servants make allegations of wrongdoing

DISCLOSURE OF WRONGDOING

Mandate

The Integrity Commissioner, an independent third party, is an essential component of a well-functioning disclosure of wrongdoing framework.

- As an independent third party, the Integrity Commissioner has authority under the *Public Service of Ontario Act, 2006* to receive and deal with allegations of wrongdoing from Ontario public servants working in ministries or public bodies.
- Public servants do not need to have exhausted the internal disclosure of wrongdoing process before they can disclose to the Commissioner.
- Wrongdoing has a special meaning in the Act. It covers acts or omissions by public servants that
  - contravene the law;
  - create grave danger to the life, health or safety of people or to the environment that is not reasonable; or
  - constitute gross mismanagement.
- When a public servant makes a disclosure to the Commissioner that a wrongdoing has occurred or is about to occur, the Commissioner must first refer the matter to an appropriate senior official in government for investigation, concealing the identity of the discloser when possible.
- The Commissioner scrutinizes the response of the senior official, and can seek additional information or make recommendations. Ultimately, if not satisfied with the response to a referral, the Commissioner can lead a new investigation.
- The Commissioner's main focus is on ensuring that the allegations received are addressed appropriately and meaningfully.

Overview

The Office of the Integrity Commissioner has continued to refine its practices relating to file intake, review and referral for investigation, and has commenced its first independent investigation. The volume of contacts and referrals has remained constant in this second complete year of operation under the mandate, yet the complexity of the files requiring review has increased.

The Ontario model is unique because it is mandatory that all allegations of potential wrongdoing are first referred by the Integrity Commissioner to an appropriate senior official within government. No other Canadian jurisdiction can provide guidance or best practices in relation to the referral mechanism. As a result, experiences gained in the first two and a half years have enabled the Office to make significant progress toward establishing its own best practices.

▶ The Ontario model is unique.

The work is focused on ensuring that allegations of potential wrongdoing are investigated with appropriate scrutiny.

To achieve this, the Office takes the following actions:

- reviews allegations before making the referral to confirm that, if proven, the conduct alleged fits the definition of wrongdoing in the Act;
- steps into the shoes of disclosers by referring allegations of wrongdoing to an appropriate senior official within government and directing an investigation be caused;
- provides guidance and sets standards for effective investigations by senior officials; and
- scrutinizes government responses to allegations, including a detailed review of the report after referral and of other materials, requesting additional information, making recommendations and following up to ensure that the required corrective actions are achieved and/or undertaken. ▶

Encouraging the use of the internal disclosure of wrongdoing framework

The Office is also focused on educating disclosers about the framework and the Commissioner's role. Experience has shown that the disclosure of wrongdoing process is not often a positive one for the discloser. The Commissioner believes that this is because the discloser is detached from the investigation and is entitled only to limited information about the investigation's outcome. To address this issue, Office staff has worked harder at the file intake stage to fully inform disclosers about the process and their role.

Learning from these experiences, it is clear that the need for external oversight diminishes when public servants have the confidence to raise allegations of potential wrongdoing, or other serious allegations, internally. The collective goal with all those responsible is to encourage the use of the internal disclosure of wrongdoing framework because it can deal with any issue and allows for more direct dealings between the discloser and senior officials and, the Office believes, for more satisfaction for all those involved.

Summary of Intake Activity

	2008-09	2009-10
Total Contacts from Public Servants	**30**	**35**
Requests for information	19	20
Intention to file a disclosure of wrongdoing	11	15

	2008-09	2009-10
Disposition of matters where public servant sought to make a disclosure of wrongdoing (including matters carried over from prior fiscal year)	**19[1]**	**18[2]**
Referred to appropriate senior official for investigation	7	3
Not received as a disclosure of potential wrongdoing because the allegations could not possibly reveal a "wrongdoing" as that term is defined in the Act	2	4
Received as a disclosure of a potential wrongdoing, but the Office was not able to deal with it because the circumstances were outside of its jurisdiction	2	1
File closed for miscellaneous reasons (e.g., discloser decided not to proceed, insufficient information to determine jurisdiction)	5	3
Remaining under review at fiscal year end	3	7

[1] Includes 11 inquiries in which the public servant expressed an intention to file a disclosure of wrongdoing, plus 8 inquiries that remained under review at year-end 2008.

[2] Includes 15 inquiries in which the public servant expressed an intention to file a disclosure of wrongdoing, plus 3 inquiries remaining under review at year-end 2009.

Referrals to Senior Officials for Investigation

When a matter is referred by the Commissioner to an appropriate senior official, he or she is required to undertake an investigation and report back to the Commissioner (referred to as a "report after referral"). The Commissioner scrutinizes the report after referral, which takes time and can require the Commissioner to seek outside expertise to evaluate and scrutinize the government response.

This is a discreet process. The law requires the protection of the identities of persons involved with disclosures of wrongdoing, including persons who make disclosures, witnesses and persons alleged to be responsible for wrongdoing. For this reason, details of the wrongdoings cannot be revealed in this Annual Report. While the public at large may not be able to identify circumstances based on a general description, the risk of identification is possible within the affected departments. With the passage of time, it is anticipated that the Office will be able to report more specifically about some of the success stories that have occurred as a result of disclosures of wrongdoing.

This year, three disclosures of potential wrongdoing were referred for investigation to senior officials within government. The referrals related to all three types of potential wrongdoing. By year-end, the Commissioner had concluded her review of two of three reports after referral. The third report after referral remains under review.

CASE 1 — Conflict of interest allegation

It was alleged that a public servant had contravened the conflict of interest rules with respect to hiring. The investigation concluded that the contravention had not occurred. The Commissioner was satisfied with the investigation and closed the file.

CASE 2 — Meeting quality standards

It was alleged that public servants were engaging in gross mismanagement or creating grave danger for failing to ensure that a service delivery unit met provincial standards. The investigation substantiated many of the circumstances alleged by the discloser. Upon review of the report after referral, the Commissioner concluded that a combination of factors, none of which were directly attributable to one person, demonstrated a degree of mismanagement, although not gross mismanagement, and led to the risk of creating grave danger that was not reasonable.

The senior official to whom the Commissioner made the referral committed to a number of corrective actions to address the problems identified and reduce the risk of future wrongdoing. In this case, the Commissioner made one recommendation that was adopted by the senior official. The Commissioner was satisfied with the investigation and closed the file.

Requests for Information, Recommendations and Investigations

Requests for Information and Recommendations

Info Requests	2
Recommendations	1
Recommendations Followed	1

When reviewing a report after referral, the Commissioner has the power to request additional information and make recommendations. The Commissioner has used the power to obtain additional information to assist with reviewing the investigation and to ensure that corrective actions undertaken as a result of the investigation are completed.

If the Commissioner is ultimately not satisfied with the investigation caused by the senior official or with the information provided in response to a request for additional information or in relation to a recommendation, the Commissioner can launch a new investigation.

This year, for the first time, the Commissioner was dissatisfied with a request for information related to a matter that was substantially concluded in fiscal year 2008–2009 and commenced an investigation, which remains outstanding at year-end.

Threat of Reprisals

The Commissioner is required each year to report a summary of what is known respecting outcomes of findings of reprisals under the Act. The Commissioner is not aware of any findings of reprisal pursuant to the provisions of the Act.

The Commissioner has no authority to address allegations of reprisals. However, the Commissioner continues to observe that the threat of reprisal is a disincentive for coming forward under the framework. To help understand and inform the process, the Office will be consulting in the coming year with public servants, deputy ministers and chairs of public bodies. They will be asked the following questions:

1. How are we doing?
2. How can we do better?
3. Are we meeting the needs of public servants who are witnessing wrongdoing?

Through the consultation and the experience to date, the Office will be assessing whether anything further can be done to address the fear of reprisal issue or to improve the way the Office carries out responsibilities under the disclosure framework.

Providing Input and Advocating for Disclosers

The Integrity Commissioner met with the Minister of Government Services about the authority the Commissioner has to arrange and pay for legal services for public servants involved in disclosures of wrongdoing. The Commissioner recommended that the regulation be clarified to allow the Commissioner greater flexibility to arrange and pay for funding to public servants who are considering making a disclosure. The Commissioner has also recommended changes to the criteria that must be considered when determining requests for funding.

Learning from Others

In October 2009, the Office welcomed representatives from six Canadian offices with similar public interest responsibilities. While the Ontario framework is unique, there are many common issues, such as investigative best practices, communication with disclosers and interpretation of the legislation. The Office benefits from a strong, consultative relationship with members of this professional group.

Did You Know?

The Integrity Commissioner is only one component of the disclosure of wrongdoing framework. There is also an internal disclosure mechanism, and there are procedures to enforce a public servant's right to be free from reprisals for making disclosures of wrongdoing.

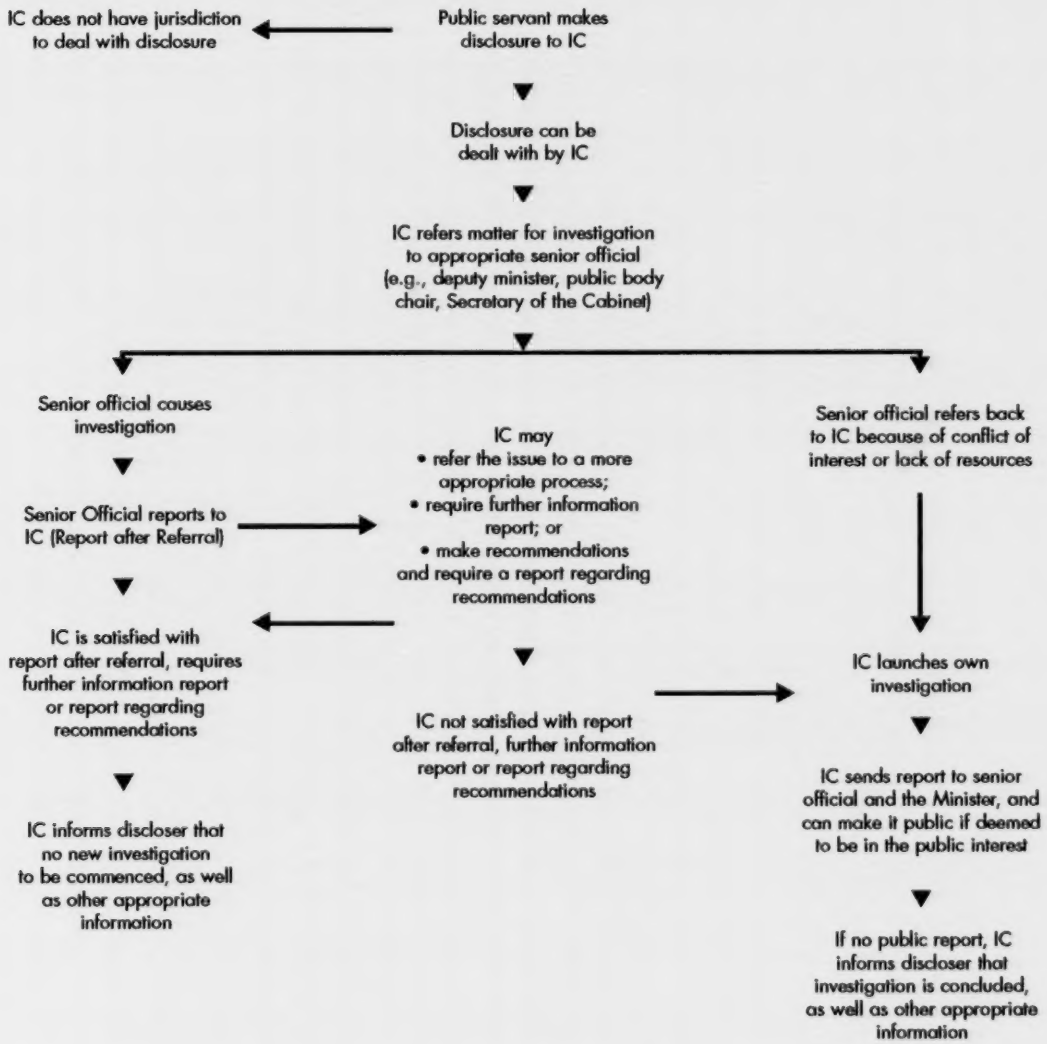
Inquiries from the Public

	2008 – 09	2009 – 10
Total number of contacts	5	14
Intended to make a complaint about a public servant	*2*	*2*

Disclosure of Wrongdoing Process

When can a public servant come here?

- He or she believes it is not appropriate to go directly to the person's Ethics Executive (deputy minister or public body chair).
- He or she has gone directly to the Ethics Executive but has concerns that the matter is not being dealt with appropriately.


Public servant makes disclosure to IC
IC does not have jurisdiction to deal with disclosure
Disclosure can be dealt with by IC
IC refers matter for investigation to appropriate senior official (e.g., deputy minister, public body chair, Secretary of the Cabinet)
Senior official causes investigation
Senior Official reports to IC (Report after Referral)
IC is satisfied with report after referral, requires further information report or report regarding recommendations
IC informs discloser that no new investigation to be commenced, as well as other appropriate information
IC may
• refer the issue to a more appropriate process;
• require further information report; or
• make recommendations and require a report regarding recommendations
IC not satisfied with report after referral, further information report or report regarding recommendations
Senior official refers back to IC because of conflict of interest or lack of resources
IC launches own investigation
IC sends report to senior official and the Minister, and can make it public if deemed to be in the public interest
If no public report, IC informs discloser that investigation is concluded, as well as other appropriate information

A robust lobbyists registration system provides government and the public with transparency about who is talking to whom in government, and about what.

Lobbyists Registration

LOBBYISTS REGISTRATION

Mandate

The Office maintains an online public record of paid lobbyists. Its responsibilities are outlined in the *Lobbyists Registration Act, 1998.*

What is Lobbying?

Lobbying occurs when a paid lobbyist communicates with a public office holder in an attempt to influence government initiatives, including the following:

- legislative proposals, bills, resolutions and regulations;
- changes to policies, programs and decisions;
- the awarding of grants, contributions and other financial benefits;
- privatization and outsourcing;
- the awarding of a contract (pertains to consultant lobbyists only); and
- the arranging of meetings (pertains to consultant lobbyists only).

What is not Lobbying?

Communications between public office holders and individuals, firms or organizations that are purely consultative and essential to public policy making is not lobbying. These communications include the following:

- submissions to legislative committees;
- submissions to public office holders with respect to the enforcement, interpretation or application of any act, policy, program, directive or guideline;
- submissions made in direct response to written requests for advice or comment; and
- routine constituency communications between MPPs and constituents.

Who is a Lobbyist?

1. Consultant lobbyists are retained by a client for a fee to communicate with a public office holder in Ontario. Examples include government relations consultants and lawyers.

2. In-house lobbyists are employed by persons, corporations or partnerships carrying on commercial activities for financial gain.

3. In-house lobbyists are employed by a non-profit organization. This includes associations, community-based organizations, charitable organizations and advocacy groups.

Overview

▶ The site is efficient and user-friendly. Try Quick Search to find any information found in the content of a lobbyist's registration form.

The Lobbyists Registration Office continued this year to focus on strengthening the disclosure of lobbyist activities in Ontario, believing that transparency increases public trust. The registry has for 11 years been an effective and efficient means to track who is lobbying whom in government, and about what. But it also strives for constant improvement, providing opinions and legislative interpretations to stakeholders while keeping a close watch on changes in other jurisdictions.

In September 2009, the Lobbyists Registrar attended the annual meeting of Lobbyist Registrars in Victoria, B.C., where round-table discussions ranged from the launch of Alberta's new lobbyists registration system to the investigation process of the Office of the Commissioner of Lobbying of Canada. Along with informal meetings with municipal, provincial and federal counterparts, the Registrar considers these meetings beneficial to share best practices and technical standards and to discuss legislative developments.

This year, the Lobbyists Registration Office initiated a significant change to increase the openness and transparency of the information gathered in the registry. When lobbyists complete their registration forms and are asked which ministries or agencies they target, they can no longer select the generic option of saying their work is focused "Government Wide." This change is effective April 1, 2010. Instead, each lobbyist must select a specific ministry or agency. The change is designed to provide a more accurate picture of lobbyists' activities, and comes as part of a regular review of registry operations. It is anticipated that further changes will be made to the registry in the coming year, all with an eye to fulfilling the key mandate of self-governance. ▶

In Ontario, the number of registered lobbyists continues to grow. At its inception, the registry held 684 active registrations with a focus on lobbying the government on the economy, health and taxation. By March 31, 2010, this figure climbed to more than 1,900, while lobbyists' efforts focused on health, the environment and taxation.

The Office benefits from a professional relationship with its stakeholders, and has seen the number of general inquiries increase as registrants become comfortable asking for guidance. Inquiry topics included discussing registration requirements, giving filing guidance, assessing whether certain lobbying activities were considered "registerable" activities, assisting with online searches and outlining the differences among the different lobbyist categories.

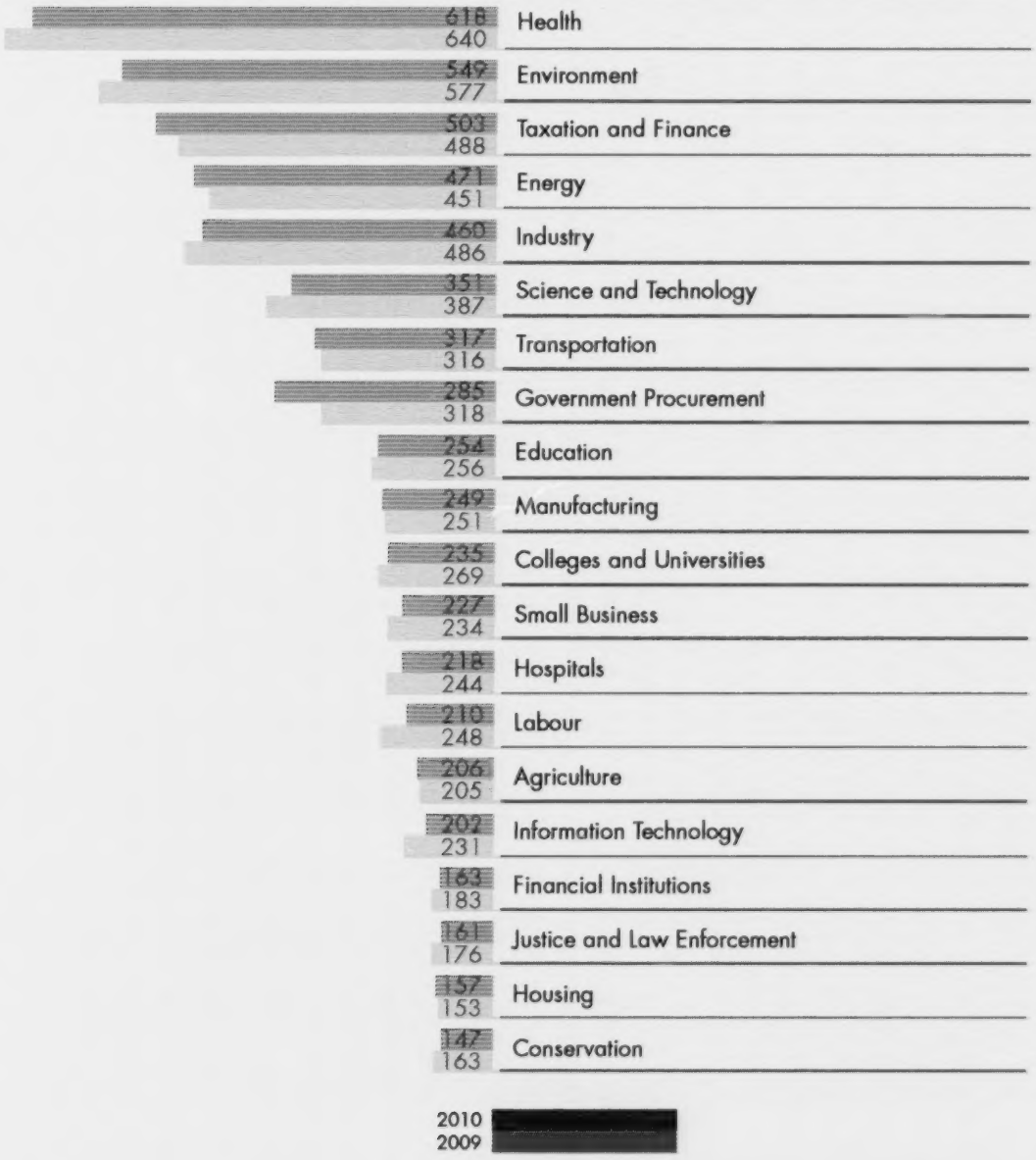
	March 31, 2009	March 31, 2010
Total Registrations	1853	1931
By Type		
Consultants	1484	1544
In-House, Organizations	211	222
In-House, Persons & Partnerships	158	165

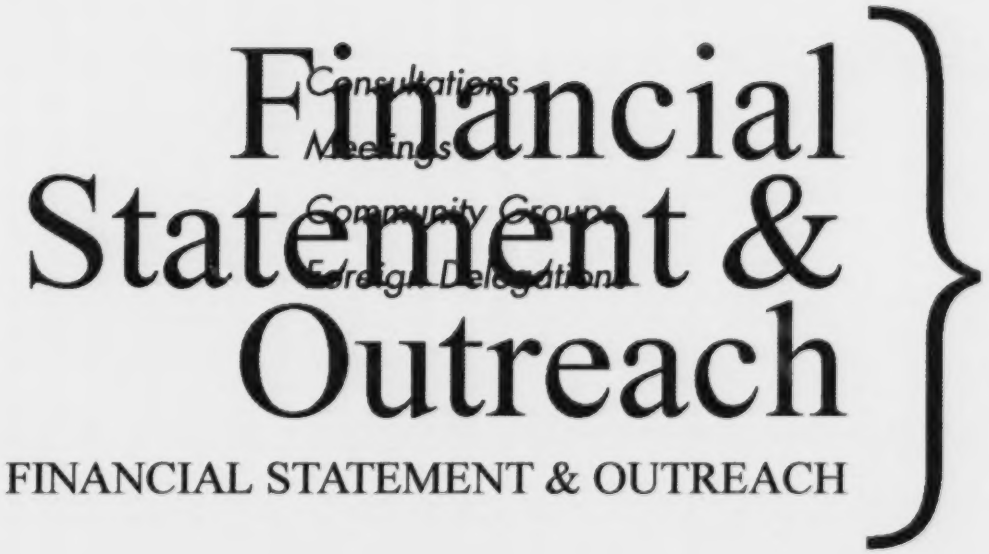
Lobbyist Activity by Ministry/Agency

[1] formerly the Ministry of Energy *[2] formerly the Ministry of Economic Development*

These statistics include those registrations where the lobbyist selected "Government Wide."

Lobbyist Activity by Subject





FINANCIAL STATEMENT & OUTREACH

Financial Statement

Salaries and Benefits	$	804,133.00
Transportation and Communication	$	59,558.00
Services	$	303,965.00
Supplies and Equipment	$	38,726.00
Total	$	1,206,382.00

- The Office of the Integrity Commissioner's fiscal year begins April 1 and ends March 31
- Financial transactions are subject to audit by the Office of the Auditor General through the accounts of the Office of the Assembly.
- Information about Public Sector Salary Disclosure can be found at **www.fin.gov.on.ca**

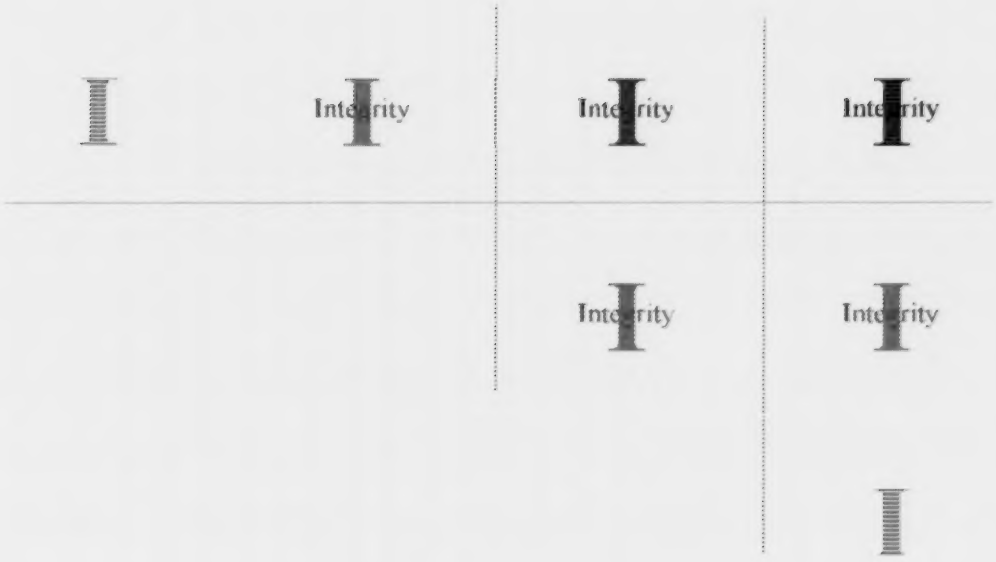
Outreach

Ethics and integrity are at the heart of public confidence in government, but even the highest standards are of little use if they are not shared and explained. The Office of the Integrity Commissioner has worked hard this past year to spread the word to MPPs, political staff, members of the public service and the public at large.

This year, the Office realized the following achievements:

- met with senior executives at each of the 22 agencies, boards and commissions whose expenses are submitted for review by the Integrity Commissioner;
- conducted ethics presentations for cabinet ministers' staff;
- played host to a national conference of federal and provincial disclosure of wrongdoing officials;
- briefed visiting delegations from China, Serbia, Russia and Ghana on Ontario's ethics rules and processes;
- published a brochure explaining the Commissioner's responsibilities;
- the Commissioner appeared before municipal and provincial ethics and integrity bodies to share best practices;
- met with community groups;
- the Commissioner appeared before the Oliphant Commission;
- strengthened relationships with other legislative bodies through informal and formal cooperation on ethics issues;
- continued an active membership in the Canadian Conflict of Interest Network;
- met and consulted with Canadian Lobbyist Registrars; and
- professionally trained staff, who attended conferences on the disclosure of wrongdoing, ethics laws and lobbyists registration.

The goal is to energetically continue this work in the coming year. The Office plans to expand and enhance the communications and outreach plan with a number of initiatives, including meetings with members' constituency staffs. Staff members are undertaking a review of the website with an eye to improving navigation and adding training materials. The Office also plans to create new materials to highlight the work on disclosure of wrongdoing and lobbyists registration.



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